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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,946	03/11/2004	Vincent P. Walker	00216-656001 / Case 8126	8017
26161	7590	03/28/2008	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			ART UNIT	PAPER NUMBER

DATE MAILED: 03/28/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/799,946	Applicant(s) WALKER ET AL.	
	Examiner SEAN M. MICHALSKI	Art Unit 3724	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 25 January 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See supplemental action, attached herewith..

/Sean M Michalski/
Examiner, Art Unit 3724

SUPPLEMENTAL ACTION

1. This action is to clarify **formality** issues of the Final Action mailed 09/04/2007, and to make clear the basis for Defecting the Appeal Brief 01/25/2008.
2. The numbering of the Rejections of the Final Action of 09/04/2007 was inconsistent, and is hereby clarified:
 - a. In the cover page, all claims were listed as rejected
 - b. The summary of rejections listed claim "1, 2, 4, 6, 9, 10, 11, 15, 28, and 81-84, 86" as being rejected over Brown in view of Rozenkranc, however the heading of that rejection lists only claims "1, 2, 4, 6, 9, 10, 11, 15, and 28" and as a result, so too does applicants appeal brief (under headings "7" "A" "(i)"). The correct heading was that listed in the Rejections summary (which was the more comprehensive listing of claims).
 - c. The summary listed as the third ground of rejection "Claims 13, 14... 87-89" but the heading of the rejection (on page 13) lists "Claims 13, 14...87-91". The correct heading is the more comprehensive, the heading including claims "87-91".
3. The Appeal brief submitted on 01/25/2008 is defective, in accordance with 37 C.F.R. 41.37 (c) vii, which states "Any claim argued separately should be placed under a subheading identifying the claim by number" and also "A statement which merely

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points out what a claim recites will not be considered an argument for separate patentability of the claim”:

- d. Section 7 A iii of appellants brief is defective since it fails to argue the claim separately.
- e. Section 7 C i of appellants brief is defective since it fails to argue the claim separately, and merely points out what a claim recites.
- f. Section 7 D of appellants brief is defective since it fails to argue the claim separately. It merely relies on arguments directed to claims from which it depends. This section stands or falls with another section; and thus is not properly sub-headed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SEAN M. MICHALSKI whose telephone number is (571)272-6752. The examiner can normally be reached on M-F 7:30AM - 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sean M Michalski/
Examiner, Art Unit 3724

/Kenneth E Peterson/
Primary Examiner, Art Unit 3724